

# **EXHIBIT A**

July 13, 2021

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No: 21-cv-00423-JSR

4 -----X  
5 MICHAEL GRECCO; MICHAEL GRECCO  
6 PRODUCTIONS, INC.,

7 PLAINTIFFS,

8 -against-

9 AGE FOTOSTOCK AMERICA, INC.,

10 DEFENDANT.

11 -----X

12 DATE: July 13, 2021

13 TIME: 8:00 A.M.

14 DEPOSITION of MARISOL MUNIZ

15 MERINO, taken by the Plaintiffs, pursuant  
16 to a notice and to the Federal Rules of  
17 Civil Procedure, held remotely via Zoom  
18 Videoconference, before Suzanne Pastor, a  
19 Notary Public of the State of New York.  
20  
21  
22  
23  
24  
25

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\* \* \*

1           A.     The records of the database --  
2     not database. The records of licensing.  
3     When someone licenses something online,  
4     there's always a record of who licensed and  
5     who was authorized from Age Fotostock  
6     America, Inc. to provide images to end  
7     users on the back-end of the system. And  
8     the images were never downloaded, never  
9     licensed to any end users.

10          Q.     Those records you referred to  
11     as in the back end system.

12          A.     Mm-hmm.

13          Q.     Are those the THP records?

14          A.     Yes.

15          Q.     What does THP stand for?

16          A.     The hosting platform.

17          Q.     The hosting platform. Can you  
18     explain that further?

19          A.     It's where the images of the  
20     database are -- from Age Fotostock Spain  
21     are hosted.

22          Q.     Is this --

23          A.     It's from Spain. Everything is  
24     located in Spain, in Barcelona. And it's  
25     housed in British Telecom servers, but it's

1 all based in Spain.

2 Q. Are you referring to the Age  
3 Fotostock server?

4 A. The THP, it's a way to -- it's  
5 hard to describe the back-end. But  
6 basically it's the database of images that  
7 the high res files are in the database and  
8 that database is accessed through back-end.

9 MS. WOLFF: May I ask that so  
10 that we have a clean record, that  
11 when you're talking about Age  
12 Fotostock Spain you say "Spain" and  
13 when you're talking about Age  
14 Fotostock America you say "America."

15 THE WITNESS: Okay.

16 MS. WOLFF: Your question just  
17 said Age Fotostock. So that was not  
18 clear.

19 THE WITNESS: Okay.

20 MS. WOLFF: No, your answer  
21 was. The question from  
22 Mr. McCulloch, he was not clear. I  
23 just would ask him --

24 THE WITNESS: I specified in my  
25 answer that the servers were in Spain

1 and it's Age Fotostock Spain that  
2 controls that database.

3 MR. MC CULLOCH: Thanks for the  
4 request, Nancy. If you have an  
5 objection, let me know. And if your  
6 witness doesn't understand the  
7 question, she can let me know.

8 MS. WOLFF: Yes, but I'm just  
9 asking going forward that you do not  
10 use the brand Age Fotostock name;  
11 when you're talking about an entity,  
12 if you would be clear. That would  
13 make the record -- I would have to  
14 object less and it will make the  
15 record clearer. So thank you.

16 MR. MC CULLOCH: Thank you for  
17 that.

18 Q. Let's return to the line of  
19 questioning about how you prepared for the  
20 deposition today. Did you receive a notice  
21 of deposition from anybody?

22 A. From my -- my lawyer sent it to  
23 me.

24 Q. Who was that?

25 A. Nancy Wolff.

1 two separate entities, and the role of each  
2 one of them. Public information also about  
3 the IP address of Age Fotostock, the domain  
4 name, the owner of the domain name of Age  
5 Fotostock. All that information is  
6 publicly accessible, so it's nothing  
7 complicated. It's only to review all the  
8 information and make sure that we have all  
9 the information to demonstrate that Age  
10 Fotostock, the website Age Fotostock is  
11 based in Spain, is owned by a Spanish  
12 company, and Age America, Inc. has nothing  
13 to do -- has no control, no control and has  
14 no access to the database of images and  
15 cannot make any changes to that set. So  
16 the only entity that controls the website  
17 is Age Fotostock Spain. Basically, it's  
18 very simple. It's not so complicated at  
19 the end of the day.

20 Q. Is Age Fotostock America an  
21 authorized user on the back end to the THP  
22 system?

23 A. The employees of Age Fotostock  
24 America are authorized users to access  
25 images to send to clients when the license

1 is requested. The same way that other  
2 third party entities, distributors around  
3 the world that we have, we have over 57,  
4 which are not subsidiaries of Age  
5 Fotostock, can access too to get the  
6 address and send to clients who want to  
7 license the images. So they only get  
8 access to the high res when the client  
9 requests a license.

10 Q. An authorized user could access  
11 the back-end system --

12 MS. WOLFF: Objection.

13 A. Can you allow me to complement  
14 the information that I provided earlier?  
15 When you said the back end, the back end  
16 keeps track -- that THP back end keeps  
17 track of all the downloads and all the  
18 authorized users that send images to end  
19 users to make sure that there is no misuse  
20 of images and to know exactly who is being  
21 licensed images.

22 So that's why we can assess  
23 that there was no -- those images were  
24 never downloaded nor licensed to end users  
25 because we keep track of that information.



1 Q. How many employees of Age  
2 Fotostock America are there?

3 A. Two salespeople.

4 Q. Two salespeople. Are there any  
5 other corporate officers?

6 A. The corporate officers are  
7 Alfonso Gutierrez, the president, Maria  
8 Jesus Baranda, she is the treasurer, and  
9 Maite Belles, who is the secretary.

10 Q. For the court reporter, we may  
11 need you to spell those names at the end.

12 A. Okay.

13 Q. I suspect that we'll have a  
14 time for that at the very end instead of  
15 having you do it throughout.

16 Let's look at topic number 2,  
17 Age Fotostock America's corporate  
18 relationship with Age Fotostock Spain. Can  
19 you describe the nature of that corporate  
20 relationship?

21 A. Yes. Basically, Age America,  
22 Inc. is there to promote, to market and to  
23 license to end users the content and to  
24 have our brand known in the U.S. This is  
25 something that we consider important in the

1 Fotostock America is identified and  
2 referred to as "the distributor." Do you  
3 see that?

4 A. Mm-hmm. Yes.

5 Q. Can you explain what that  
6 refers to, what it means to be a  
7 distributor of images?

8 A. Well, it's a term that is used,  
9 it's a term of art in the industry that the  
10 contracts between stock agencies -- I don't  
11 know if you know what a stock agency is. I  
12 can explain. Basically it's a company that  
13 licenses images or visual content, video  
14 clips to end users for them to use in a  
15 variety of end uses. It can be magazines  
16 and books, in publicity. So basically it's  
17 that.

18 The fact is that in the  
19 industry, most contracts between a supplier  
20 of content and an entity that will promote  
21 the content on a specific territory is  
22 called Distribution Agreement. It doesn't  
23 really -- you cannot use the term  
24 "distribution" as a legal term as you would  
25 understand that, supplying a copy of.

1 There's no supply of copies here, of  
2 physical copies of content. But it's the  
3 way it's been used in the industry and  
4 that's why I use it in this context.

5 Q. What do you mean there's no  
6 supply of physical copy of an image? If an  
7 end user licenses a photo --

8 A. Yes, but it goes directly to  
9 the end user. You don't supply the  
10 database. The subsidiary or the other  
11 distributor in other territories do not get  
12 the database. They only get the right to  
13 license to end user and to send that high  
14 res file to the end user.

15 Q. So if an end user licenses an  
16 image from the website, the Age Fotostock  
17 website, Age America is responsible for  
18 sending the image to the licensee?

19 MS. WOLFF: Objection.

20 Q. You can answer.

21 A. Age America is not the one  
22 supplying the image. It comes from -- it  
23 comes from the database, which is located  
24 in Spain. So if there's a request, an  
25 authorized user requesting to get a license

1 from an end user, the image will go  
2 directly to the end user. It will never  
3 come to any server in the U.S. It will go  
4 directly to the client.

5 Q. So if a client licenses a photo  
6 from Age Fotostock's website --

7 A. Mm-hmm.

8 Q. -- what role does Age America  
9 play in that process?

10 A. Only granting the license and  
11 invoicing.

12 Q. Why does Age America have  
13 authorized users who can access image files  
14 from the back-end THP system then?

15 MS. WOLFF: Objection.

16 A. To send to the clients.

17 Q. So Age America is responsible  
18 for accessing the high res file and sending  
19 it to the clients?

20 A. The only purpose is to send it  
21 to the clients, yes.

22 Q. Let's go to in this section, do  
23 you see Section 1.1.12?

24 A. Mm-hmm.

25 Q. Visual content.

1 available for the U.S., others for Spain,  
2 and others worldwide. So therefore, it  
3 cannot be that I can grant the rights to  
4 license all the content on the website  
5 because it's not the case.

6 Q. But the License Agreement  
7 between Age Spain and Age America refers  
8 only to visual content.

9 MS. WOLFF: Objection.

10 A. Can I specify? Licensed under  
11 the terms of this agreement, that's visual  
12 content. Then you go down and you say  
13 okay, the content that you can license to  
14 customers. So therefore, the license  
15 enters into effect, I hope I can clarify  
16 this, only when a client selects an image  
17 to be licensed and is located in the U.S.  
18 and requests that license.

19 At this point this image is  
20 available for the U.S., the client is  
21 American, and then I can grant the license.  
22 That's when Age Fotostock America can  
23 license. Before that, it doesn't enter  
24 into play before that specific moment.

25 Q. The "specific moment" you're

1 referring to is when an end user --

2 A. Exactly, when an end user  
3 selects an image that is available to be  
4 licensed from the Age Fotostock Spain  
5 platform for that territory and the client  
6 wants to license it and downloads it and  
7 accepts the terms of the License Agreement.  
8 Before that Age Fotostock America, Inc.  
9 does not enter into play because everything  
10 is under Age Fotostock Spain website terms  
11 and conditions and licensing.

12 Is it clear or is it confusing?

13 Q. I am just going to ask some  
14 questions that perhaps clarifies some of  
15 that. This agreement is a license between  
16 Age Spain and Age America, correct?

17 MS. WOLFF: Objection.

18 A. Mm-hmm.

19 MS. WOLFF: Objection to the  
20 form.

21 A. It's a Distribution Agreement.

22 Q. It includes a license, correct?

23 MS. WOLFF: Objection.

24 Q. You can answer.

25 A. It's a license -- you're asking

1 me for a legal conclusion. That's what I  
2 think. It's a right, I give the right for  
3 Age Fotostock America, Inc. to license  
4 content, to grant the right to license to  
5 end users.

6 Q. And the right to license to end  
7 users is to the visual content that's  
8 available in the territory.

9 MS. WOLFF: Objection. You can  
10 answer.

11 A. That is available, yes, to be  
12 licensed in the territory.

13 Q. And that license from Age Spain  
14 was effective as of the date that this  
15 agreement was effective, correct?

16 MS. WOLFF: Objection to form.

17 You can answer.

18 A. What I don't understand -- yes,  
19 it was effective at that time. But I have  
20 to clarify, this is not the agreement that  
21 was in force when this case came because  
22 there's another agreement in 2019. So this  
23 one is not applicable anymore.

24 Q. We'll go through that one as  
25 well.

1 Are you aware of any -- since  
2 you mentioned it here, to keep it together  
3 in the record, is there any difference in  
4 the license provision term between the two  
5 agreements?

6 A. Basically, if I remember  
7 correctly, it was the commission because at  
8 the beginning the salespeople -- the sales  
9 force over there were doing a lot more  
10 business development, contacting big  
11 editorials, so they were getting a bit more  
12 commission. But basically the terms are  
13 the same.

14 Q. Under the agreement that we're  
15 looking at, the right and license that's  
16 given to Age America includes the right to  
17 advertise, promote, market and license the  
18 visual content. Do you see that?

19 A. Mm-hmm.

20 Q. Can you explain to me what  
21 steps Age America took to advertise,  
22 promote and market visual content in  
23 America?

24 A. Our salespeople are trying  
25 desperately, because the times are



1     difficult, to get agreements with big  
2     editorials, big companies to use the  
3     content, to get -- so this is the  
4     promotion, they're sending e-mailers,  
5     they're contacting them, they're meeting  
6     with them to try to get agreements for them  
7     to license content.

8                 So this is basically what we  
9     understand by advertising, promoting, and  
10    trying to get licenses for the content in  
11    the U.S.

12            Q.     I'm going to refer you to  
13    Section 5 of this agreement. Section 5.1,  
14    (ii), do you see that?

15            A.     Yes.

16            Q.     And I apologize, in a normal  
17    deposition, when I say I'll refer you to a  
18    portion of the agreement or a document, I  
19    would have you just go there and have  
20    control of the materials. So let me know  
21    if you'd like me to scroll up or scroll  
22    down and I can zoom in if it's not --

23            A.     Okay.

24            Q.     Just let me know going forward.

25            A.     Okay.

1 They follow up on clients' needs, make sure  
2 that they -- if they can participate in any  
3 type of new project, that they can be there  
4 and be part of the supplier of images.  
5 It's basically what they do.

6 Q. The next provision, again,  
7 says -- provision 3, (iii), says, "Use its  
8 best commercially reasonable efforts to  
9 actively promote and market during the term  
10 of this agreement" --

11 A. It's redundant.

12 Q. Let me finish.

13 -- "during the term of this  
14 agreement the visual content." Do you see  
15 that?

16 A. Mm-hmm.

17 Q. So would you agree that it's an  
18 obligation of Age America to promote and  
19 market the visual content that's available  
20 for licensing in the territory?

21 MS. WOLFF: Object to form.

22 A. What they're obliged to do is  
23 to try to get licenses, not to market  
24 because they don't have access to the  
25 visual content. It's a way of saying it,

1 but basically what they have to promote,  
2 it's the licensing of the visual content.

3 Q. So Age America is trying to  
4 drive customers to the website to license  
5 visual content?

6 A. Yes.

7 MS. WOLFF: Object to form.

8 You can answer.

9 Q. You can answer.

10 A. Yes.

11 Q. Under sub provision (vii) it  
12 says that "Age America will not make use of  
13 the visual content for or in association  
14 with any pornographic purposes." Do you  
15 see that provision?

16 A. It means that they cannot allow  
17 the licensing of the content for any such  
18 uses. So they have to agree to not use  
19 it -- to not allow that.

20 Q. The agreement makes -- the  
21 agreement uses the phrase "make use." Do  
22 you see that?

23 A. You make use when you allow  
24 other people to use it in that way.

25 Q. Thank you.

1 site.

2 In the case of Age America,  
3 they do not have high res on servers. They  
4 might have comps, like small thumbnails.

5 Q. The reference to "comps," is  
6 that a term of art?

7 A. Yes.

8 Q. Can you expound upon what a  
9 comp is?

10 A. A comp is a small file, a small  
11 file, it's about less than 2 megabytes.  
12 When you license high res, it's from 26  
13 megabytes to 50 megabytes, so it's a much  
14 larger file that allows to use it and make  
15 a -- for big spaces.

16 In a comp, it's only a very  
17 small file, like the ones you see when you  
18 Google on Google Images. And it allows the  
19 client to see -- to view images and see  
20 which ones would fit the purpose they want  
21 to use it for. So it's a way to review the  
22 selection and see, okay, this one is fine  
23 for what I want to do so I can select it  
24 and I can license it. The other ones I  
25 don't want, for example.

1 Age America's efforts to promote and  
2 solicit licenses.

3 A. Mm-hmm.

4 Q. Do you recall that testimony?

5 A. Yes.

6 Q. And you said that Age America  
7 would send e-mailers to potential clients.  
8 Do you recall?

9 A. Yes.

10 Q. Would that include sending  
11 galleries of images or comps to clients?

12 A. What it says is galleries, but  
13 galleries that refer to the website. They  
14 don't send directly the information, the  
15 images to clients. They only send  
16 information like a promo, whatever, that  
17 refers to the website.

18 Q. So sales agents from Age  
19 America are you saying never send image  
20 files to potential customers?

21 A. Well, directly? Unless a  
22 client requests a very specific, and it's  
23 always through Spain. They don't really  
24 deal with images themselves.

25 Q. In marketing and promoting

1 visual content, you're saying Age America  
2 sales agents don't deal with images?

3 A. No. What you need to  
4 understand, it's maybe the wording is not  
5 appropriate for this specific case, but  
6 what we want our office to do is to get  
7 agreements with big entities and get  
8 licensing -- big licensing agreements for  
9 projects. So that's what we understand by  
10 promoting. Promoting the licensing of  
11 content. Not sending content to --  
12 directly sending content to the clients,  
13 you know? It's to go talk to them, try to  
14 get an agreement to say okay, we agree that  
15 this year you're going to license 2,000  
16 images and the price will be price  
17 agreement quotes.

18 That's what we understand by  
19 "promoting." And that's needed, and that's  
20 why local entities are very important  
21 because the personal contact is very  
22 important. So this is why we consider it  
23 was important to have a different entity in  
24 the U.S. to do that job.

25 Q. For companies that you referred

1 to earlier such as Random House, Penguin,  
2 large publishers, they often have projects  
3 that include hundreds of thousands of  
4 images, correct?

5 A. Yes.

6 Q. And in trying to secure  
7 licenses to be the provider of content for  
8 those large projects, don't sales agents  
9 often in the industry put together  
10 galleries of images in order to show the  
11 customer these are the types of images we  
12 have, give us your business?

13 A. Not necessarily because they're  
14 already known. You have to get the  
15 website. They know clients already, know  
16 the content. The people who are in the  
17 industry, they already know who are the  
18 players in the market. You only have to be  
19 able to convince them that you can provide  
20 them a good price for the content you have  
21 and that would suit them.

22 But they're the ones going and  
23 searching on the website and looking for  
24 the images by typing the key words and  
25 seeing if the results are appropriate.

1           Q.     In the industry, isn't it often  
2     the case that sales agents know that they  
3     can shortcut some of that, do some of that  
4     work for their clients and show their  
5     clients that we have the content you need  
6     for this project?

7           MS. WOLFF:  Objection.

8           A.     As I said in the answer before  
9     saying that most of those searches are done  
10    in Spain, you know?  And then sent to the  
11    client.  So because we have people here  
12    specializing in doing those researches.  We  
13    have researchers; in the U.S. you don't  
14    have.  So this is not done by the U.S.

15          Q.     In sending out the mailers,  
16    e-mail or whatever, Age America is  
17    permitted to include content in those  
18    promotional efforts, correct?

19          MS. WOLFF:  Objection.

20          A.     As I said, we refer to the  
21    website.  Actually, we're promoting  
22    licensing for the website.  Basically  
23    that's it.  So when they send e-mailers,  
24    it's basically to promote for clients to go  
25    see the website, and if they are



1 interested, to license content. And if  
2 they're interested in the content from the  
3 U.S., that's when and only when Age America  
4 enters into play.

5 Before that it's the website of  
6 Age Spain that does everything, that has  
7 the content, that has the database, that  
8 has the contracts with suppliers. You  
9 know? Everything is handled by Age Spain.

10 So America is merely a contact,  
11 you know, with important clients over there  
12 to try to drive sales.

13 Q. And if there is a sale, Age  
14 America's responsibility also is to deliver  
15 the content, correct?

16 A. The content is delivered from  
17 Spain.

18 Q. I'm not asking where it's  
19 delivered from. I'm asking who delivers  
20 it.

21 A. Yes.

22 Q. "Yes" meaning Age America is  
23 the deliverer -- the supplier of the  
24 content?

25 MS. WOLFF: Objection. You can

1 answer.

2 A. The license is granted -- as I  
3 said, the license is granted and invoiced  
4 by them. The content goes directly from  
5 the database to the client. Therefore,  
6 basically it's not the one supplying the  
7 content, it's the one licensing and making  
8 sure that the content gets to the client  
9 and the client gets invoiced and he gets a  
10 commission. That's basically what happens.

11 Q. If Age America doesn't send out  
12 images as comps to customers and Age  
13 America doesn't deliver content, as you  
14 say, to customers, why do they have -- why  
15 does Age America have back-end authorized  
16 user access to the THP members area?

17 MS. WOLFF: Objection. You can  
18 answer.

19 A. When they are authorized, it's  
20 to send directly -- they have to put the  
21 address of the client to send the content  
22 directly to the client. Do you understand  
23 the way it works? You enter -- you say  
24 this image needs to go to this client and  
25 you put the e-mail of the client. So it

1 Agreement for Visual Content." Do you see  
2 that?

3 A. Yes.

4 Q. Is this a reference to the End  
5 User License Agreement that's available on  
6 agefotostock.com?

7 A. Yes.

8 Q. And that is the -- I'm sorry,  
9 go ahead.

10 A. It refers to the one from  
11 Spain.

12 Q. But it's the End User License  
13 Agreement that's on agefotostock.com,  
14 correct?

15 A. Correct.

16 Q. And that is --

17 A. I want to specify that Age  
18 Fotostock, it's a website owned by Age  
19 Fotostock Spain. Because I don't think  
20 it's being clear here that it's a website  
21 owned and controlled by Age Fotostock  
22 Spain, not by Age Fotostock America, Inc.  
23 This is why it has to be licensed under  
24 terms similar to the end users License  
25 Agreement of Spain.

1           Q.     The End User License Agreement,  
2     though, is an agreement that identifies Age  
3     Fotostock America, correct, as the  
4     licensor?

5           A.     No. Here you're talking  
6     about -- for this particular definition, it  
7     refers to Age Fotostock Spain.

8           Q.     Let's step back. I just want  
9     to be clear that the Age Fotostock License  
10    Agreement for visual content refers to the  
11    document, which we'll see in a minute, that  
12    is available on agefotostock.com as the End  
13    User License Agreement.

14          A.     Yes. Where the licensor is Age  
15    Fotostock Spain.

16          Q.     Okay.

17          A.     Can I add something? The  
18    purpose of this definition, it's because  
19    afterwards I'm going to say you have to  
20    license the content to end users with terms  
21    similar to the ones of the End User License  
22    Agreement. Therefore, terms similar to the  
23    End User License Agreement that is granted  
24    by Age Fotostock Spain. Is it clear? Do  
25    you understand the definition here? It

1 refers to Age Spain.

2 What I'm saying -- when I say  
3 rights to Age Fotostock America I'm saying  
4 you're allowed to license to end users  
5 based on an End User License Agreement  
6 similar, substantially similar to the one  
7 available on Age Fotostock Spain. But I'm  
8 referring to the Age Fotostock America  
9 Spain EULA, not the American one. And it's  
10 basically the same one that is shown here.  
11 But in the context of the definition shown  
12 under 1.1, I'm referring to the EULA of Age  
13 Spain.

14 Q. I'm going to show the witness  
15 what's being marked as Plaintiffs'  
16 Exhibit 5.

17 (Whereupon, End User Visual  
18 Content License Agreement, AFA  
19 242-249 was marked as Plaintiffs'  
20 Exhibit 5 for identification as of  
21 this date by the Reporter.)

22 Q. This is the Visual Content  
23 License Agreement. Do you see that?

24 A. Mm-hmm.

25 Q. Is this the EULA that you're

1 referring to?

2 A. I was referring to the one of  
3 Spain. This is the one of Age America,  
4 Inc. that comes into effect when a client  
5 wants to license and pays a license. This  
6 is why when you see on the back there, it's  
7 "subject to your full payment of the  
8 license and the restrictions set forth in  
9 this agreement." Therefore -- before that,  
10 this agreement -- or the license is not  
11 granted to the end user. Therefore, Age  
12 Fotostock is not granting anything before  
13 that.

14 Do you understand that? It's  
15 the tempo, you know? The way everything  
16 goes when you use the website, there's  
17 different steps, you know? And on the  
18 first part, the major part, it's Age  
19 Fotostock Spain that does everything, that  
20 controls everything and only, and only, and  
21 only when a client decides to license and  
22 pays the content, that's when this license  
23 comes into effect. Your right to use any  
24 is subject to your full payment of the  
25 license.

1 to end users in the territory. The terms  
2 under which you can license the images are  
3 this ones. You cannot license under  
4 different terms than these ones. It does  
5 not mean that I'm licensing images to Age  
6 America.

7 Q. Let's go to Section 2.1. It  
8 says, "Age Fotostock hereby grants to  
9 distributor and the distributor accepts the  
10 nonexclusive and revocable right and  
11 license during the term of this agreement."  
12 Do you see that?

13 A. Mm-hmm.

14 Q. So Age America has appointed  
15 and granted a license to Age America.

16 A. Mm-hmm. But to license to end  
17 users.

18 Q. To license to end users.

19 A. It's very different than what  
20 you're trying to say. I'm not licensing  
21 all the content to Age America for them to  
22 license to end users. I'm allowing them to  
23 market the content for them to license that  
24 content directly to end users. I see it  
25 differently.

1 Q. So Age Spain has granted to Age  
2 America a license to authorize other end  
3 users to use the content, subject to the  
4 Visual Content License Agreement in  
5 Plaintiffs' Exhibit 5, correct?

6 A. Exactly.

7 Q. And that is accepted by Age  
8 America in 2.1, correct?

9 A. What is accepted? Can you  
10 rephrase?

11 Q. In 2.1 it says the distributor  
12 accepts the license. Is that accurate?

13 A. Accepts the rights granted to  
14 them to be able to license to end users and  
15 to promote and market the content.

16 Q. So Age America is aware of and  
17 knew of the content and terms of the Visual  
18 Content License Agreement.

19 A. Was aware of the terms of the  
20 EULA, yes.

21 Q. And under the terms of that  
22 agreement, the EULA, the Visual Content  
23 License Agreement, that it was the licensor  
24 and supplier of the images to any customers  
25 in the territory, correct?



1           A.     Yes.  Once they agreed to  
2     license and pay -- again, it's very  
3     important, the difference.  Not as a  
4     general statement, the right.  No, the  
5     right to license once a client requests a  
6     license and pays.  That's when they supply  
7     the content.

8           Q.     So they grant a license to an  
9     end user --

10           MS. WOLFF:  Objection; legal.

11           Q.     They grant a license to an end  
12     user and supply content to an end user only  
13     after the end user pays is what you're  
14     saying?

15           MS. WOLFF:  Objection;  
16     compound.

17           Q.     You can answer.

18           A.     They grant -- the license is  
19     granted -- I think I referred to the EULA.  
20     You need to read the EULA and what it says.  
21     I'm not going to be interpreting it in  
22     other ways.  That's what it says.

23           Q.     You said that it comes into  
24     effect, or it springs into effect, the EULA  
25     does, when an end user pays.

1           A.     They reserve the right to grant  
2     the license once they pay because it's an  
3     online sale. You pay, you download and you  
4     accept the license and terms.

5           Q.     In order to grant the license  
6     to an end user though, Age America had a  
7     prior license to do so from Age Spain.

8                     MS. WOLFF: Objection. Legal.

9           Q.     You can answer.

10                    MS. WOLFF: You're asking the  
11     same question over and over. There's  
12     a contract here. The contract speaks  
13     for itself.

14                    MR. MC CULLOCH: You don't have  
15     the right to make speaking  
16     objections.

17           A.     I'm going to repeat it. I'm  
18     reading the contract. It grants the right  
19     to give licenses to end users. I'm going  
20     to repeat it 20 times. 2.1, you're asking  
21     me to repeat this over and over.

22           Q.     And under 1.1.9, the territory  
23     for Age America is defined as the United  
24     States of America, correct?

25           A.     Yes.

1 Q. And were all of the photographs  
2 at issue in this case made available in the  
3 territory?

4 MS. WOLFF: Objection.

5 A. Well, what do you mean -- it's  
6 a legal term? What do you mean "made  
7 available"?

8 Q. Let's put it this way. Did Age  
9 America have the right under this agreement  
10 to grant licenses to the photographs?

11 MS. WOLFF: Objection.

12 Q. You can answer.

13 A. They were -- technically they  
14 could because they were available for the  
15 territory. But they never downloaded,  
16 never sent, never -- never sent -- they  
17 never were sent to clients. So therefore I  
18 don't see, you know, that they were made  
19 available to anyone.

20 The way that the website works  
21 is that you have thumbnails, very small  
22 files of images. The website works as a  
23 search engine basically, where end users  
24 type a keyword and they get a result and  
25 they browse through the results and they

1 see if it's good for them or not. The same  
2 way you browse through Google images. And  
3 then if they're interested, then they  
4 request a license and then they go through  
5 the process of licensing. But before that  
6 they're only browsing through thumbnails.

7 Q. And when they purchase a  
8 license -- I'm sorry, I didn't mean to cut  
9 you off. I thought you were done.

10 When an end user purchases a  
11 license, they purchase it from Age America  
12 though.

13 A. Yes.

14 Q. They pay Age America.

15 A. Yes.

16 Q. And Age America has its own  
17 bank account and it retains the funds for  
18 the license.

19 A. Yes.

20 Q. And then Age America remits  
21 royalties or a portion of the fees back to  
22 Age Spain.

23 A. Exactly.

24 Q. I just want to refer you back  
25 up to 1.1.3. Is this the term that you

1 A. Yes.

2 Q. And that would include the  
3 visual content that's available in the  
4 territory -- sorry --

5 MS. WOLFF: Objection.

6 Q. The reference to "visual  
7 content" is the visual content within the  
8 territory, as this provision states.

9 MS. WOLFF: Objection. You can  
10 answer.

11 A. I think I'm going to rephrase  
12 what I said before. What we are actually  
13 promoting, when we go to clients it's not  
14 promoting per se the visual content but  
15 promoting the licensing of content  
16 available on the website. So you don't  
17 promote specific visual content the way you  
18 tend to say. It's not the specific  
19 content. It's the use of the website to  
20 end up licensing content.

21 Q. Age America, as you're saying,  
22 is driving customers to the website?

23 A. Yes.

24 Q. And that would include the  
25 photographs at issue in this lawsuit?

1           A.       Mm-hmm. Yes. As I tried to  
2 explain, the way they access it is to send  
3 to clients. They put the e-mail of the  
4 client and then the link is sent to the  
5 client.

6           Q.       It says here in Section 7.1,  
7 (i) that "the distributor shall pay Age  
8 Fotostock 50 percent of all net receipts."  
9 You testified about this. I'm just  
10 confirming, Age America is the one that  
11 gets paid and collects the license fee from  
12 end users, correct?

13          A.       Yes.

14          Q.       And then Age America then  
15 remits 50 percent of the proceeds to Age  
16 Spain.

17          A.       Yes, exactly. It's a separate  
18 entity. It has its own accounts, bank  
19 accounts. It's asked to present taxes in  
20 the U.S., it's subject to any legal  
21 requirements in the U.S. as any other  
22 entity, American entity. And as any other  
23 distributor we have in the world, they do  
24 exactly the same. They collect and they  
25 pay us a royalty.

1           A.       Basically, what happened, when  
2 we got the claim -- that Age America got  
3 the claim, since the contract was signed  
4 only with Spain, what they did as any other  
5 third party distributor would do is saying  
6 look, we received this claim. It's your  
7 problem because you are the one, you know,  
8 supplying me the rights. So if there's a  
9 problem, you have to fix it. So they sent  
10 it to Age Spain to fix it.

11                 But they're not aware of the  
12 contracts, what the representation,  
13 warranties, they only have what was  
14 represented and warranted under their  
15 contract. But they're not going to get  
16 access, as any other distributor would not  
17 get access, to internal agreements between  
18 Age Spain and third parties.

19                 This is why I am a bit confused  
20 that you have this information and it was  
21 produced under Age America.

22           Q.       The president of Age America is  
23 the same as the president of Age Spain,  
24 correct?

25           A.       Mm-hmm.

1 section. Do you see that?

2 A. Mm-hmm. Yes.

3 Q. Are you aware of -- was Age  
4 America aware of this notice provision?

5 A. No. But I don't see the  
6 relevance, honestly. The images in  
7 question --

8 Q. I'm just asking if Age America  
9 was --

10 A. No. The response is no.

11 Q. When did United Archives  
12 provide the photographs at issue in this  
13 lawsuit to Age Spain?

14 A. I think they were between 2017  
15 and 2019, from the information supplied to  
16 me by the content provider -- the content  
17 department of Age Spain. They were not  
18 supplied at the same time. Some images in  
19 2017, and some others in 2019.

20 Q. Okay. And you said that that  
21 occurred by FTP?

22 A. Yes.

23 Q. Approximately how many images  
24 were delivered in 2019 by United Archives?

25 A. I don't have that information.



1 Q. But the photographs at issue in  
2 this lawsuit, at least four of the five,  
3 were delivered by United Archives to Age  
4 Spain?

5 A. Yes.

6 Q. Does Age America have any  
7 copies of those photographs?

8 A. No.

9 Q. Has Age America ever been asked  
10 to delete or destroy those images?

11 A. No.

12 Q. Did anybody instruct Age  
13 America to search its systems for any of  
14 those photographs?

15 A. Not necessary because we keep  
16 track, as I said, of any downloads or any  
17 uses of the list of authorized users and  
18 who downloads and uses those images.  
19 Therefore, since they were never downloaded  
20 or licensed by Age America, they never had  
21 them in their system.

22 Q. So the system would track any  
23 downloads at all, even if they weren't  
24 licensed?

25 A. The system, yes, tracks -- for

1 example, if a client downloads for a comp,  
2 it tracks everything.

3 Q. What if an FTP member  
4 downloads?

5 MS. WOLFF: Objection.

6 A. An FTP, you can't --

7 Q. I'm sorry, a THP member  
8 downloads.

9 A. The same. It keeps track.  
10 That's why a THP, it's a platform and it  
11 controls all the downloads, all the  
12 uploads, it controls everything. Spain  
13 controls everything in the THP.

14 Q. The THP system would record any  
15 downloads, even if it wasn't for a license?

16 A. Yes.

17 Q. And that information doesn't  
18 have to be entered manually?

19 A. No.

20 Q. So what information in THP  
21 needs to be entered manually? Just the  
22 invoice terms?

23 A. Everything to invoice, yes.  
24 The part of invoicing, sending -- reports  
25 are generated automatically. Basically

1 in the territory for Age America to  
2 license?

3 A. I don't know.

4 Q. Does Age America know whether  
5 or not it has access to or -- let me put it  
6 this way, that it has a license to grant  
7 sublicenses to photos from that collection?

8 MS. WOLFF: Objection. Legal.

9 A. I don't know. I don't know --  
10 that information I don't know.

11 Q. Do you know whether or not the  
12 photographs at issue in this lawsuit were  
13 included in this upload?

14 A. No. They're not publicity  
15 stills, so it couldn't be. It could be  
16 cinema.

17 Q. It could be cinema?

18 A. Yes. They're not -- they're  
19 about movies, they're pictures of record.  
20 They're not about publicity.

21 Q. So it's Age America's testimony  
22 that these photographs are not publicity  
23 stills?

24 A. I don't know. I already  
25 answered I have no idea because I don't

1 deal with the day-to-day issues that you're  
2 asking me here, about exactly what  
3 publicity stills are and how many of those  
4 46,000 images are included or not. I don't  
5 even think our content supplier could  
6 answer that without looking into the  
7 records.

8 Q. Does Age America know -- let me  
9 strike that.

10 Referring you down a little  
11 further in Exhibit 7, there's a reference  
12 to "regarding Age Fotostock USA, we have  
13 received a payment." Do you see that  
14 reference?

15 A. Mm-hmm.

16 Q. Is this what you were  
17 testifying earlier to, that Age America  
18 makes payments directly to United Archives?

19 A. Yes.

20 Q. Does Age America pay all of its  
21 clients directly -- or rather, all of the  
22 suppliers directly?

23 A. No.

24 Q. Why does Age America pay United  
25 Archives directly?

1 pricing on the website?

2 A. The website -- it is  
3 Fotostock's website, therefore yes.

4 Q. So Age America is the licensor,  
5 but Age Spain totally controls the website  
6 and all of the business conducted there?

7 A. No, not all because only the  
8 website one, but when it's outside the  
9 website agreements, especially agreements,  
10 as I mentioned before, that was the main  
11 purpose of having subsidiary layers to get  
12 special agreements, price agreements with  
13 editorial companies and other publicity  
14 companies. So those agreements, they are  
15 the ones setting the price.

16 Q. For those special arrangement.  
17 I'm talking about purchases through the  
18 website, that's controlled by Age Spain?

19 A. Yes.

20 Q. And the president of Age  
21 America is also the president of Age Spain,  
22 correct?

23 A. I already replied to this.

24 Q. How about the treasurer and  
25 secretary, are they also corporate officers

1 of Age Spain?

2 A. No.

3 Q. They are not employees of Age  
4 Spain?

5 A. No. One is an employee, but  
6 the other one is not.

7 Q. Which one is an employee of Age  
8 Spain?

9 A. Maria Jesus, the treasurer.

10 Q. What's her position at Age  
11 Spain?

12 A. The financial director.

13 Q. And who did you say was the  
14 secretary again?

15 A. Maite Belles.

16 Q. And that is not an employee of  
17 Age Spain?

18 A. No.

19 Q. Who chooses the employees, the  
20 sales agents? How are they hired?

21 A. For which company?

22 Q. Age America. How did it hire  
23 its sales agents?

24 A. How did -- the sales agents --  
25 you mean the sales account executives? The

1 administrative stuff. That person handles  
2 a bit more paperwork and has more  
3 responsibilities. But I wouldn't call that  
4 an office manager.

5 Q. And in terms of the notice of  
6 lawsuit to Age America, when did Age  
7 America become aware of the claims of  
8 Mr. Grecco?

9 A. I think it was the 4th of  
10 September.

11 Q. How did Age America become  
12 aware of those claims?

13 A. By e-mail.

14 Q. Who received the e-mail?

15 A. Age office, Age America. New  
16 York office.

17 Q. I'm going to show you what will  
18 be marked as the next exhibit. I believe  
19 we are on 8.

20 (Whereupon, 9/21/2020 E-mails,  
21 AFA 38-48 was marked as Plaintiffs'  
22 Exhibit 8 for identification as of  
23 this date by the Reporter.)

24 A. This is Age New York. The  
25 address Age New York.

1 Q. Is this the e-mail that you're  
2 referring to?

3 A. Yes.

4 Q. And it was sent to --

5 A. Raquel Martinez is an employee  
6 of Age America.

7 Q. She's an employee of Age  
8 America?

9 A. Yes.

10 Q. Is she still employed there?

11 A. Yes.

12 Q. And what did Ms. Martinez do  
13 with this?

14 A. She sent it to Alfonso and to  
15 me.

16 Q. And you're the one that  
17 responded?

18 A. Yes.

19 Q. So Age America received a  
20 notice of a claim and referred it back to  
21 Age Spain, and in-house counsel for Age  
22 Spain responded to the claim and the  
23 notice.

24 A. I already answered that at the  
25 beginning saying that they sent the claim



1 to us for us to handle it since the  
2 agreement was between us and United  
3 Archives and Marie Evans.

4 Q. I'll introduce what's marked as  
5 Plaintiffs' Exhibit 9.

6 (Whereupon, 9/7/2020 E-mail,  
7 AFA 281-286 was marked as Plaintiffs'  
8 Exhibit 9 for identification as of  
9 this date by the Reporter.)

10 Q. Ms. Muniz, on September 7th you  
11 provided the notice of claims to United  
12 Archives, is that correct?

13 A. Yes.

14 Q. And you advised that you were  
15 going to remove the images from your site.  
16 Do you see that?

17 A. Yes. But they actually sent a  
18 deletion request the same day also.

19 Q. What does it mean to remove  
20 images from the website?

21 A. To delete it from the database.

22 Q. Is it possible to remove images  
23 without deleting them?

24 A. To make them inactive you mean?

25 Q. Yes.

1 A. Yes, it is possible.

2 Q. Did Age America at any point  
3 advise you not to delete images?

4 A. Age America had nothing to do  
5 with this. They didn't deal with it. Age  
6 Spain decided to remove them. It's Age  
7 Spain that decided to deal with the claim  
8 because they considered they were the ones  
9 responsible to answer it considering the  
10 Distribution Agreement and the License  
11 Agreement with the supplier which provided  
12 some representation and warranties. So  
13 that's how we handled it.

14 Q. And then you made the choice  
15 not to just make them inactive but to  
16 delete them.

17 MS. WOLFF: Objection.

18 A. Yes.

19 Q. When you delete an image from  
20 the website, does that also delete it from  
21 the server?

22 A. Yes.

23 Q. There's not a backup that's  
24 permanent?

25 A. That I cannot answer. I don't

1 that there are different categories it  
2 looks like, three different categories for  
3 different territories. There seems to be a  
4 sales category, a pending to report to  
5 photographers, and reported to  
6 photographers. Do you see that?

7 A. Yes.

8 Q. Where in the THP system does it  
9 track downloads but not sales?

10 A. In the back, at the end it  
11 should have something about downloads.

12 Q. When you say "in the back" or  
13 the end --

14 A. At the end of the page.

15 Q. Down here?

16 A. You see? That's where it  
17 tracks what's been downloaded by who and  
18 sent. You have the information there. I  
19 can't see it very well, it's too small.

20 Q. I can zoom in.

21 A. Resolution, you get all the  
22 information. Nombre agentes. It's in  
23 Spanish. The agency that downloaded, it  
24 can be Age America, it can be other third  
25 parties, the date it was downloaded, where

1 it was. All the information on that.

2 Q. So even if an image is deleted  
3 from your system, the record of the image  
4 asset still exists, is that correct?

5 A. Yes.

6 Q. And is this information  
7 available any other way than through the  
8 THP system?

9 A. No.

10 Q. Walk me through here. How  
11 would a sales agent manually input any  
12 sales or invoicing information? How does  
13 that happen?

14 A. You have to go to -- you see on  
15 top there's different sections, on top?

16 Q. Up here?

17 A. Invoicing, do you see  
18 invoicing?

19 Q. Yes.

20 A. You go there and you enter the  
21 information according to what is required  
22 to invoice.

23 Q. So the options at the top are  
24 for -- potentially for inputting data, not  
25 just viewing data?

1           A.       Exactly. Except this, you  
2 cannot alter -- this is generated by the  
3 system. You cannot input downloads. It's  
4 generated by the system. And whatever is  
5 in the account is translated here, if it's  
6 been licensed, invoiced and all that. So  
7 it's a system of following up on invoicing,  
8 downloading, licensing. It tracks every  
9 license and downloads and invoicing.

10          Q.       Let's go to the download  
11 section. I'm wondering if you can walk me  
12 through -- this is the agent name. What  
13 does that refer to?

14          A.       It can be an agent or it can be  
15 an authorized user mostly. Since it's an  
16 internal thing, they didn't report too much  
17 on the names. But it would be any  
18 authorized user that downloaded the image.

19          Q.       When you say "authorized user,"  
20 you mean someone authorized to access the  
21 THP system?

22          A.       Yes.

23          Q.       So the THP system does not  
24 track whether or not a customer downloaded  
25 comps?

1 downloads through the website?

2 A. Yes.

3 Q. But if someone purchases a  
4 license from the website, that information  
5 is available here?

6 A. Yes, because the website  
7 doesn't have the high res. The high res  
8 are in the database. So when you purchase,  
9 what the system does is go get the high  
10 res, you know, in the database to send it  
11 to the client. The website only has comps.

12 Q. So let's talk about where  
13 copies of images may exist.

14 A. Mm-hmm.

15 Q. They would exist in some form  
16 on the website, correct?

17 A. Thumbnails, yes. Not the high  
18 res, the low res. Like the way you search  
19 an image in Google Images, it's the same.

20 Q. And they also would exist in  
21 high resolution on a separate server, is  
22 that correct?

23 A. In the database, yes.

24 Q. And they would also exist in  
25 thumbnails in the THP system?

1 America, and this is document number 34,  
2 the first page. 34, 35 and 37. So it was  
3 produced by Age America in this lawsuit.

4 How did it come to be in the  
5 possession of Age America?

6 MS. WOLFF: Objection.

7 Q. You can answer.

8 A. It was supplied probably by Age  
9 Spain, yes.

10 Q. It was supplied by you.

11 A. Mm-hmm.

12 Q. To Age America.

13 A. Mm-hmm.

14 Q. Who at Age America did you  
15 supply it to?

16 A. Alfonso Gutierrez.

17 Q. When did Mr. Gutierrez as  
18 president of Age America come to possess  
19 this document?

20 A. When we got it. As soon as we  
21 got it from United Archives. I don't  
22 recall the date.

23 Q. Was it after the lawsuit was  
24 initiated or before that?

25 A. After.

1 agreement. It is allowed to. Doesn't mean  
2 that it will, but is allowed to. It gives  
3 them the right to.

4 Q. This agreement in number 2  
5 says, this license is not transferable and  
6 Age Fotostock, which in this agreement is  
7 defined as Age Fotostock Spain, may not  
8 provide any images to any third party  
9 licensing entity for sublicensing, resale  
10 or further redistribution. Do you see  
11 that?

12 A. Mm-hmm.

13 Q. Do you see that?

14 A. Yes.

15 Q. But Age Fotostock does permit  
16 Age America -- Age Fotostock Spain does  
17 permit Age Fotostock America to license  
18 these images in the United States.

19 MS. WOLFF: Objection.

20 Q. You can answer.

21 A. It was made available  
22 through -- for Age Fotostock and any of its  
23 affiliates in the U.S. That's why --  
24 United States of America, they knew it was  
25 going to be Age America dealing with that.



1 Q. So at the time that Age Spain  
2 and Mary Evans entered into this agreement  
3 in 2013, Age America and Age Spain already  
4 had an agreement in place in 2009, correct?

5 A. Yes.

6 Q. And Mary Evans was aware that  
7 Age America --

8 A. Yes.

9 Q. -- sorry Age Spain would be  
10 sublicensing through America.

11 MS. WOLFF: Objection.

12 Q. Is that true?

13 MS. WOLFF: Legal.

14 Q. I'm asking if you know. You  
15 can answer.

16 A. They were aware we were  
17 licensing content in the U.S.

18 Q. Through Age America, correct?

19 A. Mm-hmm.

20 Q. But the agreement specifically  
21 says that there is no sublicensing  
22 permitted through third parties.

23 MS. WOLFF: Objection.

24 A. Third party licensing entity.  
25 They didn't consider Age America a third

1 party licensing entity.

2 Q. Okay.

3 A. Can I see the beginning of the  
4 contract, please?

5 Q. Sure.

6 MS. WOLFF: Show her the  
7 beginning.

8 A. (The witness reviews the  
9 document.)

10 They knew we were working  
11 because on the website, they knew that  
12 anything licensed in the U.S. was going to  
13 be. Since they agreed to license in the  
14 website, that's the way we were working.

15 Q. I'd like to refer you to what  
16 will be Exhibit 13.

17 (Whereupon, 7/23/19 E-mail, AFA  
18 241 was marked as Plaintiffs' Exhibit  
19 13 for identification as of this date  
20 by the Reporter.)

21 Q. Are you familiar with this  
22 e-mail?

23 A. Yes.

24 Q. Is it your understanding that  
25 this is when Age -- sorry, when Mary Evans

1 uploaded --

2 A. Not uploaded. They sent the  
3 hard drive.

4 Q. Thank you, they sent a hard  
5 drive?

6 A. Mm-hmm.

7 Q. And that is your understanding  
8 of when Mary Evans provided the photographs  
9 to Age Spain?

10 A. They said they wanted to post.  
11 They just said that it was sent in the post  
12 today. I don't know when they received it  
13 afterwards.

14 Q. Thank you for that  
15 clarification, but my question more  
16 pertinent is, is it your understanding  
17 that this is the hard drive that contained  
18 the photograph at issue here that came from  
19 Mary Evans?

20 A. Yes. It is my understanding.

21 Q. And that was in July 2019. At  
22 some point after July 23, 2019.

23 A. Well, that's when they said  
24 that they sent the hard drive, not when we  
25 received it, but when they sent it.

1 Q. Does Age America have any more  
2 information about the rights that Mary  
3 Evans had to the photographs that were  
4 available for licensing in the United  
5 States?

6 A. No. It relies on the agreement  
7 signed with Age Spain.

8 Q. Age America is relying on Age  
9 Spain to handle that side of the business?

10 A. No, no, no.

11 MS. WOLFF: Objection.

12 A. That's not what I'm saying.  
13 I'm saying that the Distribution Agreement  
14 that we have in place, that's what Age  
15 Fotostock America relies on.

16 Q. And Age Spain handles all and  
17 controls all of the supplier agreements.

18 A. Yes.

19 Q. And Age America relies on it  
20 for that purpose.

21 A. Yes. For that small purpose.

22 Q. To negotiate and execute  
23 agreements with suppliers.

24 A. All the content is negotiated  
25 and sent to Spain who processes it and

1 uploads it on the website. Age America  
2 only, as I said, promotes and markets, you  
3 know, the licensing of content through the  
4 website and through any other means, but by  
5 creating licensing -- price agreements, but  
6 that's basically it. There's no other  
7 mystery behind it.

8 Q. I'll show the witness what  
9 we'll mark as Exhibit 14.

10 (Whereupon, Luke Perry Stock  
11 Photos, AFA 10 was marked as  
12 Plaintiffs' Exhibit 14 for  
13 identification as of this date by the  
14 Reporter.)

15 Q. Have you seen this image  
16 before, Ms. Muniz?

17 A. Yes.

18 Q. Are you aware that this is one  
19 of the images at issue in this lawsuit?

20 A. Yes.

21 Q. I'd like to just kind of walk  
22 through a little bit what information is on  
23 this page so that we can kind of understand  
24 what some of these terms mean. When it  
25 says "image code," what does that refer to?

1 first three letters would refer to the  
2 supplier?

3 A. Yes.

4 Q. So this image code would  
5 correspond to the image code that was on  
6 the website for this particular image?

7 A. Yes. This is my understanding,  
8 yes.

9 Q. While we're here, I didn't ask  
10 this question previously, I'm sorry to jump  
11 back. But now that we're looking at this  
12 THP report, do you have any understanding  
13 of what AF Archive refers to? This says  
14 "Mary Evans/AF Archive/Universal TV."

15 A. No. These are probably  
16 captions given by Mary Evans. We produced  
17 whatever they sent us I guess. I don't  
18 know.

19 Q. So you're saying that Mary  
20 Evans determines what information is  
21 referenced by the MEV code?

22 A. No, no. MEV code is created by  
23 us. Whatever is after, I think it's the  
24 credit given by Mary Evans on the image.  
25 That's my understanding. The credit.

1 Q. So would AF Archive refer to  
2 Age Fotostock?

3 A. No. I don't know what it is.

4 Q. All right, going back to the  
5 website screen capture, which is Exhibit  
6 14, when it says "user license," do you see  
7 that? Under "details." It has "image  
8 code, photographer, collection, and user  
9 license." And it has "rights managed." Do  
10 you see that?

11 A. Yes.

12 Q. Is that the types of licenses  
13 that are available for this?

14 A. Yes. But it's limited to  
15 editorial views only, as you can see.

16 Q. And who determines the  
17 restrictions on the license that's on this  
18 website?

19 A. The supplier. It comes with  
20 the images. You have to put the license  
21 restriction on images. So we only process  
22 the restriction given by the supplier.

23 Q. But I'm saying Age Spain  
24 receives the information. The  
25 restrictions, as you put it, are put on by

1 the supplier, and Age Spain codes the  
2 website to make sure those restrictions are  
3 in place, correct?

4 A. Yes.

5 Q. And the types of licenses that  
6 are available, here "editorial use only,  
7 rights managed" limits the type of license  
8 that Age America can provide.

9 A. Yes.

10 MS. WOLFF: Objection.

11 A. It's the same as before. If  
12 you look under Age America, it's going to  
13 be on the website, it's going to be the  
14 same information. If you end up licensing  
15 for Age America for the U.S. this image,  
16 you will have the same restriction. I  
17 don't understand your question.

18 Q. I'm just asking who chooses  
19 those restrictions --

20 A. It's not by who controls the  
21 website. It's Age Spain that controls the  
22 website because Age Spain does everything.

23 Q. And in terms of the URL here  
24 that's in the screen capture,  
25 agefotostock.com/Age/EN, is that a



1 reference to English?

2 A. Yes.

3 Q. And that would be the United  
4 States territory for the --

5 A. No, it can be English, the  
6 English language.

7 Q. But any licenses granted in  
8 America, the territory for where those  
9 licenses are available would be in the  
10 English portion of the Age Fotostock  
11 website, correct?

12 A. You can have the Spanish and  
13 licenses -- you can have the Spanish  
14 language selected and being licensed in the  
15 company in the U.S. The language has  
16 nothing to do with the territory.

17 Q. Let me ask the question this  
18 way. Where would I determine whether or  
19 not this photo was available for licensing  
20 in a particular territory? Because you  
21 said Age America couldn't grant certain  
22 licenses --

23 A. Mm-hmm.

24 Q. -- if it was in a different  
25 territory. And I'm asking --

1           A.     You have to register. To be  
2     able to license, you need to be a  
3     registered user. When you register, you  
4     enter your residence. When they detect  
5     that you are American, you will only see  
6     content that can be available in the U.S.

7           Q.     Because this is a U.S. TV show,  
8     U.S. actor in a U.S. TV show, this was the  
9     photo that was available for licensing in  
10    the U.S.

11           MS. WOLFF: Objection.

12           Q.     Is that correct?

13           MS. WOLFF: If you know.

14           A.     I don't know.

15           Q.     But Age America would have been  
16    the one to process any licenses for this in  
17    America.

18           MS. WOLFF: Objection.

19           Q.     Through the website. I'll  
20    strike the question.

21           MS. WOLFF: To be clear, I  
22    don't think this image is part of the  
23    complaint.

24           MR. MC CULLOCH: I understand.

25           MS. WOLFF: Okay, I just wanted

1       you see that?

2             A.       Yes.

3             Q.       What is the relevance of that,  
4       if you're aware?

5             A.       I'm not aware.

6             Q.       And let me ask you a question  
7       about the caption and the keywording. Who  
8       does the captioning and keywording for  
9       images?

10            A.       It's sent by the supplier.

11            Q.       The supplier does the  
12       imaging -- sorry, the keywording?

13            A.       And captioning, yes.

14            Q.       How about the keywording?

15            A.       The keywording, no, it's them,  
16       too. The supplier sends the keywords.

17            Q.       Does the supplier also control  
18       the shooting date? Do you see where it  
19       says "shooting date" under "user license"?

20            A.       Yes. Not everybody supplies  
21       information. But if they do, we enter  
22       whatever they send us. That's when I said  
23       that we process, you know? You have to  
24       upload or they send us the archive with the  
25       information and we only process it. We

1 upload whatever they give us.

2 Q. I'm just asking whether or not  
3 that is information that is auto generated.  
4 And let me put it this way. If the  
5 customer -- or excuse me, the supplier  
6 doesn't have the shooting date there, if  
7 that is auto generated in some way, like  
8 the date it's uploaded for instance to the  
9 website.

10 A. I don't think so. We don't put  
11 anything. It doesn't show, if I recall --  
12 I would have to double-check, but I'm  
13 pretty sure it doesn't show if we don't  
14 have it.

15 Q. So if an image has no shooting  
16 date -- sorry, if a supplier doesn't  
17 provide a shooting date --

18 A. That section doesn't show.

19 Q. Is that also true with  
20 photographer and collection, the other  
21 information that's listed just above the  
22 shooting date?

23 A. Can I see it?

24 Q. Sorry, I didn't mean to take it  
25 down. So the image code, and then between

1       there -- or below that is photographer and  
2       collection. I'm wondering if --

3           A.       No. The photographer is the  
4       credit that they give us. We never touch  
5       that. The collection, yes, it's the  
6       collection is the supplier we sign the  
7       contract with. So if it's Mary Evans, it's  
8       the company that shows in the contract.

9           Q.       I am at a point to take a quick  
10      break. I think we'll be pretty close to  
11      the end. I appreciate your time. It's  
12      been three and a half hours or so.

13          A.       Can I have a question? Do you  
14      think it can be finished before 6:30?

15          Q.       I'm going to do my best to wrap  
16      up. That's exactly what my question was.  
17      I'm not sure exactly what the time is there  
18      and so I was just checking.

19          A.       Here it's 5:30.

20          Q.       So let's take a really quick  
21      break and I'll endeavor to make sure that  
22      we're wrapped up before 6:30.

23          A.       Okay, perfect.

24                   (Whereupon, a short recess was  
25      taken.)

1 BY MR. MC CULLOCH:

2 Q. Ms. Muniz, I want to return  
3 briefly to your testimony about employees  
4 of Age America. The president, treasurer  
5 and secretary, the corporate officers of  
6 Age America, do any of them live or reside  
7 in America?

8 A. No.

9 Q. Do they all live in Spain?

10 A. Yes.

11 Q. What about Raquel Martinez,  
12 does she live in America?

13 A. Yes.

14 Q. She lives in New York?

15 A. Yes.

16 Q. And are there any other sales  
17 agents presently?

18 A. Kevin Knowell lives in the U.S.  
19 Kevin Knowell.

20 Q. And I believe in response to --  
21 I'm just looking now for the response to  
22 discovery requests from Age America.  
23 There's a response that it's a virtual  
24 office.

25 A. They work from home. They work

1 from home.

2 Q. They work from home? Is that  
3 because of the pandemic or has that always  
4 been the case?

5 A. No, no, it's because of the  
6 pandemic.

7 Q. That's just what we wanted to  
8 clarify, what the meaning of "virtual  
9 office" is. That shift happened everywhere  
10 pretty much, so not surprising.

11 All right, I don't have any  
12 further questions at this point for the  
13 witness. I appreciate your time. And  
14 unless there's further questions, Nancy --

15 MS. WOLFF: No further  
16 questions.

17 THE REPORTER: Counsel Wolff,  
18 do you want a copy of the transcript?

19 MS. WOLFF: Yes, I would.

20 MS. GATES: Ms. Pastor, I think  
21 we need an expedited copy. I can  
22 e-mail about that.

23 MR. MC CULLOCH: We made the  
24 same request, Ms. Pastor.

25 (Whereupon, at 11:45 A.M., the

1 examination of this witness was  
2 concluded.)

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## D E C L A R A T I O N

I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

\_\_\_\_\_  
MARISOL MUNIZ

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

July 13, 2021

161

## C E R T I F I C A T E

STATE OF NEW YORK            )  
                                      :       SS.:  
COUNTY OF ALBANY            )

I, SUZANNE PASTOR, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this day, July 14, 2021.



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SUZANNE PASTOR